

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**INCOME TAX REFERENCE No. 276 of 1994****For Approval and Signature:****HONOURABLE MR.JUSTICE D.A.MEHTA****HONOURABLE MS.JUSTICE H.N.DEVANI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
KETAN CHEMICALS - Respondent(s)

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Appearance :

MR MANISH R BHATT for Applicant(s) : 1,
MR SN SOPARKAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 23/11/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1.The Income Tax Appellate Tribunal, Ahmedabad

Bench "B" has referred the following question under Section 256(2) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income Tax.

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that there should be two separate assessment in the case of the assessee?"

2.The Assessment Year is 1981-82. The assessee, a partnership firm came into existence on 12/2/1978 with Samvat Year as its accounting period. The firm was comprised of 14 partners. On 26/8/1980, out of the 14 partners, 5 partners retired, and a deed of retirement was duly executed. The remaining 9 partners executed a fresh

partnership deed on 27/8/1980 along with 6 new partners, and continued the business. The partnership deed so executed on 27/8/1980 specifically recorded as one of the terms that the accounting period of the partnership shall be the financial year, namely, commencing from 27/8/1980 and ending on 31/3/1981 in the first instance.

3. The Assessing Officer invoked the provisions of section 187(2) of the Act (as the provisions then stood), and held that there was only a change in constitution of the firm. He, therefore, rejected the request of the assessee to make two separate assessments and framed only one assessment comprising of the accounting period commencing on 22/10/1979 and ending on 31/3/1981.

4.The assessee carried the matter in appeal.

The Commissioner (Appeals) accepted the contention raised on behalf of the assessee that the issue was concluded by decision of Gujarat High Court in the case of Additional C.I.T., Gujarat v. Harjivandas Hathibhai, [1977] 108 ITR 517, with special reference to the observations made at page No.526 of the Reports. He, therefore, directed the assessing officer to frame two assessments, one for the period from 22/10/1979 to 26/8/1980, and second one from 27/8/1980 to 31/3/1981.

5.The revenue carried the matter in appeal before the Tribunal. Vide order dated 15/10/1986, the Tribunal upheld the order of Commissioner (Appeals).

6.Mr.M.R.Bhatt, the learned senior standing counsel appearing on behalf of the applicant revenue invited attention to provisions of section 187(2) of the Act as well as the decision in the case of Commissioner of Income Tax v. Amritlal Nihalchand, [1992] 196 ITR 345, to submit that this was not a case of dissolution of the partnership and provisions of section 188 of the Act could not be applied to the facts of the case. Mrs.Swati Soparkar, the learned advocate appearing on behalf of the respondent assessee relied on the impugned order of the Tribunal.

7.As can be seen from the impugned order of Tribunal, it has accepted as a matter of fact that, in the new partnership deed,

which was executed on 27/8/1980, there was no mention of the old partnership; the books of accounts had been closed on 26/10/1980 with balance-sheet drawn up on the said date; and there was change in the accounting period. The Tribunal has emphasized on the aspect of the change in the accounting period having been accepted by the assessing officer, namely, from Samvat Year to financial year

8.Nothing has been brought on record to dislodge the aforesaid findings of fact. It is apparent from the aforesaid findings that a new contract was entered into on 27/8/1980 incorporating fresh terms, including the change in accounting period and the same came to be accepted by the assessing officer. On behalf of the revenue, there is

no evidence pointed out from record that the new contract entered into between the parties, including the change in accounting period, had any relevance with the old partnership.

9. In these circumstances, in light of the findings of fact recorded by the Tribunal, there is no infirmity in the decision of the Tribunal so as to warrant intervention.

10. The question is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

11. The reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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